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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,856	01/07/2002	Susan Slaughaupt	13572-105039	5418
65989	7590	08/31/2007	EXAMINER	
KING & SPALDING			MYERS, CARLA J	
1185 AVENUE OF THE AMERICAS			ART UNIT	
NEW YORK, NY 10036-4003			PAPER NUMBER	
			1634	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/041,856	Applicant(s) SLAUGENHAUPT ET AL.	
	Examiner Carla Myers	Art Unit 1634	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 61 and 68.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 81-84, 87-90, 100 and 101.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**CARLA J. MYERS**  
**PRIMARY EXAMINER**

Continuation of 3. NOTE: The amendments to the claims raise new issues that would require further search and consideration. In particular, the amendment to claim 100 changes the scope of claims 100 and 101 and raises new issues under 3 USC 102/103 that would require further search and consideration. The amendment also raises new issues under 35 USC 112, second paragraph because it is not clear as to which probes are intended to be present in the kit - e.g., one of the probes selected from probes a) - h) or one of the probes selected from the group consisting of a), b), c) AND d), and one of the probes selected from the group consisting of e), f), g) and h). The amendment to add new claim 102 raises new issues under 35 USC 112 first paragraph (written description and enablement) and new issues with respect to 35 USC 102 and 103 that would require further search and consideration since the claims have not previously included kits that contain oligonucleotides for the detection of the recited genetic diseases. The amendment to add claim 102 also raises the issue of new matter. As acknowledged in Applicant's response, page 6 of the specification discloses kits that contain "genetic tests" for diagnosing additional genetic diseases. However, the specification does not appear to provide support for the concept of kits that further include isolated oligonucleotides for the detection of the recited genetic diseases.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments are directed to the claims as amended in the after final amendment. However, this amendment has not been entered. Accordingly, the request for consideration is not persuasive for the reasons of record in view of the non-entry of the after final amendment .